

UTAH OPEN & PUBLIC MEETINGS ACT

UTAH CODE TITLE 52, CHAPTER 4

Department of Administrative Services Internal
Service Fund Rate Review Committee Meeting

September 9, 2020



Purpose of this presentation:

- General explanation about the purpose of the Open and Public Meetings Act (“OPMA”)
- Review of OPMA notice requirements for meetings
- Review closed meetings and meeting minute requirements.

WHAT IS OPMA?

WHAT IS OPMA?

Open and
Public
Meetings
Act

Why do we do this?

“The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.”

Utah Code § 52-4-104

Declaration of Public Policy Utah Code §52- 4-102

- (1) The Legislature finds and declares that the state, its agencies and political subdivisions exist to aid in the conduct of the people's business.
- (2) It is the intent of the Legislature that the state, its agencies and its political subdivisions :
 - *(a) take their actions openly;*
and
 - *(b) conduct their deliberations openly.*

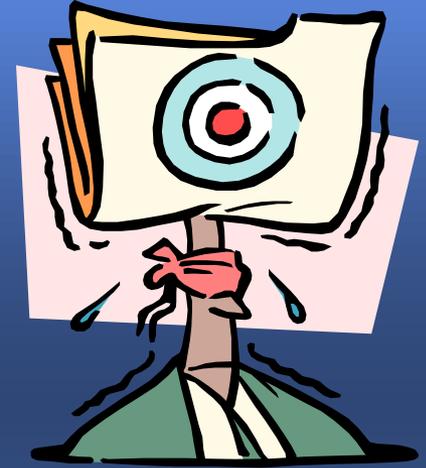


UTAH OPEN & PUBLIC MEETINGS ACT

- WHAT DOES THE OPEN MEETINGS ACT DO?
 - “It requires government to take actions openly.”
 - “Ensures deliberations allow for an open public process.”
-
- In other words, we want the people to know what is going on with state government.

Who Is Subject To This Law?

- “Public Body” defined by Utah Code § 52-4-103(9)
- A Public Body means any “administrative, advisory, executive, or legislative body of the state or its political subdivisions” that:
 1. Is created by the Utah Constitution, statute, rule, ordinance, or resolution;
 2. Consists of two or more persons;
 3. Expends, disburses, or is supported in whole or in part by tax revenue; and
 4. Is vested with authority to make decisions regarding the public’s business.



Who Is Not Subject to the Open Meetings Act Law?

- Political parties, groups and caucuses
- State Legislative conference, rules and sifting committees
- School community council, established under 53A-19-108
- The Economic Development Legislative Liaison Committee (2017 Change)



Cardiff Canyon Owners Assoc. v. Mountain Accord

- July 10, 2017 decision from Judge Laura Scott, 3rd District Court, Salt Lake County
- The Mountain Accord initially was a joint or cooperative undertaking because all of the parties were public agencies.
- Consequently, Mountain Accord is a “public body” subject to the requirements of OPMA.
- Each of the public entities acting alone “would be unquestionably subject to the OPMA.” The Court concluded that a private entity’s participation in a joint or cooperative undertaking does not take Mountain Accord “beyond the reach of the OPMA.”

...in other words

When in doubt, hold a public meeting.



Utah Code

§ 52-4-103(5)(a)

- WHAT IS A MEETING?
 - “Meeting” means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.”

Utah Code § 52-4-103(5)(b)

- WHAT DOES “MEETING” NOT MEAN?
 - A chance meeting
 - A social meeting
 - Meeting of a public body with **both** legislative and executive responsibilities where:
 - No public funds are appropriated for expenditure
 - Meeting solely for discussion or to implement administrative/operational matters for which no formal action by the public body is required
 - Meeting solely for discussion or to implement administrative/operational matters that would not come before the body for discussion or action

What is a Quorum?

- § -103(10)(a) **“Quorum”** means a simple majority of the membership of a public body, unless otherwise defined by applicable law
- § -103(10)(b) **“Quorum”** does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power

So why is notice so important?

- If the meeting is a public meeting, it really can't be a public meeting if the public doesn't know about the meeting.

Public Notice



So what are the essential elements for notice?



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#1 24 Hours Notice

“A public body shall give not less than 24 hours' public notice of each meeting.”

- Utah Code § 52-4-202(1)(a)(i)

So what are the essential elements for notice?

#1 24 Hours Notice

“A public body shall give not less than 24 hours public notice of each meeting.”

- Utah Code § 52-4-202(1)(a)(i)

Remember: This is the minimum requirement.

So what are the essential elements for notice?

#2 Notice shall include the following:

- The Agenda
- The Date
- The Time
- The Place
 - Utah Code § 52-4-202(1)(b)

So what are the essential elements for notice?

#3 The notice shall provide “reasonable specificity” to notify the public as to the topics to be considered at the meeting.

- Utah Code § 52-4-202(6)(a)

“Reasonable Specificity”

- Enough information to allow the public to know what is being considered during the meeting.

Capital City Council Agenda

- Welcome
- Discussion about city stuff
- Discussion about some property
- Voting about something
- Public comment
- Adjournment

Capital City Council Agenda

- Welcome
- Discussion and public comment about road construction of Main Street
- Action item: Council discussion and vote on award of contract for State Street roundabout.
- Public comment
- Adjournment

How important is notice?

A public body may not take final action on a topic in an open meeting unless the topic is:

- Listed under an agenda item as required by -202(6)(a), and
- Included with the advance public notice.
 - Utah Code § 52-4-202(6)(c)

So what about public comment?

A topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.

- Utah Code § 52-4-202(6)(b)

So what about public comment?

A topic raised by the public **may be discussed** during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.

- Utah Code § 52-4-202(6)(b)

So what are the essential elements for notice?

#4 If the public body holds regular meetings that are scheduled in advance over the course of a year, it shall give public notice at least once each year of its annual meeting schedule.

- Utah Code § 52-4-202(2)(a)

So what are the essential elements for notice?

#5 A public body satisfies a requirement for public notice by posting written notice:

1. At the principal office of the public body/building where meeting is to be held;
2. On the Public Notice Website; and
3. A newspaper of general circulation or a local media correspondent.

- Utah Code § 52-4-202(2)(a)

Welcome to the Utah Public Notice Website: Your central source for all public notice information in Utah

Find a Notice

[Advanced Search](#)

First select your Government, then the entity and then finally the Body. Results will appear below.

Government [?]

- State
- County
- Cities
- Schools
- Special Districts
- Higher Education
- Interlocal
- Courts

Entity [?]

- Career Service Review Office
- Department of Administrative Services
- Department of Agriculture and Food
- Department of Alcoholic Beverage Control
- Department of Commerce
- Department of Corrections
- Department of Environmental Quality

Body(s) [?]

- Purchasing and General Services
- Purchasing From People With Disabilities Advisory Board
- Rate Committee
- State Records Committee
- THIS IS A TEST PUBLIC BODY
- Transparency Board
- Utah Procurement Policy Board
- Utah State Building Board

Please note: Results for the browse search are limited to the last 6 months. To do a full archive search use the advanced search.

[Subscribe to this Body](#)

Browse State Records Committee Results

Notice	Event Date	Status	Attachments
State Records Committee Agenda	10/11/2018	Scheduled	October 11, 2018 SRC AGENDA.pdf Other <small>Added: 2018/09/26 07:52 AM</small>

Is the Utah Public Notice Website a Requirement?

A public body and a specified body are encouraged to develop and use additional electronic means to provide notice of their meetings under – 202(3).

Legislature recognition that some political subdivisions of the state may not have “electronic means.”

Attendance at Meetings

Utah Code § 52-4-207

- DO I HAVE TO ATTEND MEETINGS, OR CAN IT BE HELD WITHOUT PEOPLE IN THE SAME ROOM?
 - Can meet by phone or other electronic means which allows all participants to hear or observe communications
 - Must be adopted into existing rules/ordinance
 - Notice requirements still apply
 - Public must have a means to attend or participate



H.B. 5002 Open and Public Meetings Act Amendments

Bill Text

Status

Hearings/Debate

Enrolled

Printer Friendly 

1

OPEN AND PUBLIC MEETINGS ACT AMENDMENTS

2

2020 FIFTH SPECIAL SESSION

3

STATE OF UTAH

4

Chief Sponsor: Val K. Potter

5

Senate Sponsor: Wayne A. Harper

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Open and Public Meetings Act in relation to an
10 anchor location for an electronic meeting.

H.B. 5002

Bill Sponsor:



Rep. Potter, Val
K.

Floor Sponsor:



Sen. Harper, Wayne
A.

Drafting Attorney: Thomas R. Vaughn

Fiscal Analyst: Sean C. Faherty

Bill Tracking

[Tracking Page](#)

Bill Text

Introduced 

Utah Code § 52-4-207(4)

Electronic Meetings (2020)

- A public body may convene and conduct an electronic meeting without an anchor location if the chair of the public body:
 - Makes a written determination that conducting the meeting with an anchor location presents a substantial risk to the health and safety of those who may be present at the anchor location;
 - States in the written determination the facts upon which the determination is based;
 - Includes in the public notice for the meeting and reads at the beginning of the meeting the above information; and
 - Includes in the public notice information on how a member of the public may view or make a comment at the meeting.
- The written determination expires 30 days after the day on which the chair of the public body makes the determination.
- For an electronic meeting held without an anchor location, must provide means by which the public may hear, or view and hear, the open portions of the meeting.

Utah Code §52-4-201, -204 & -205

Closed Meetings

- CAN A MEETING BE CLOSED TO THE PUBLIC? IF SO WHEN?
 - An open meeting can be closed for the following purposes:
 - A meeting is open to the public unless closed under § 52-4-204, -205 or -206
 - Discussing an individual's character, professional competence, or physical or mental health
 - Strategy sessions to discuss collective bargaining
 - Strategy sessions to discuss pending or reasonably imminent litigation



Closed Meetings (Cont.)

- An open meeting can be closed for the following purposes continued:
 - Discussions regarding security personnel, devices or systems
 - Investigative proceedings regarding allegations of criminal misconduct
 - Strategy sessions to discuss the purchase, exchange, lease or sale of water rights or water shares if public discussion would disclose the appraisal/estimated value of the property under consideration; or would prevent the transaction from being completed under the best possible terms

Closed Meetings (Cont.)

- An independent Legislative Ethics Commission or Legislative Ethics Committee review of ethics complaints
- A county legislative body discussing commercial information.
- Strategy sessions to discuss the purchase, exchange, lease or sale of real property
 - Public notice of the terms and public approval of sale required
 - Water rights shares under certain conditions

Are There Any Meetings That Must Be Closed?

- **NO.** NOTE: A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Utah Code § 52-4-205.
- The decision to close a meeting to the public is always discretionary, not mandatory. The law does not require any meeting to be closed.
- **EXEPTIONS** The following must be closed:
 - A meeting of the Health and Human Services Committee to review a fatality review report
 - A meeting of the Child Welfare Legislative Oversight Panel to review a fatality review report

Utah Code §52-4-204 Closing Meetings

- IS THERE A PROCESS TO CLOSE MEETINGS?
- YES, 52-4-204
 - A Quorum must be present.
 - Two-thirds of the members present must vote to close the meeting.
 - The body must first hold an open public meeting with proper notice before entering into the closed meeting.
 - The body must publicly disclose: **Note: there are separate requirements in subsections (B), (C) & (D)**
 - The vote by name of each member for or against entering into the closed meeting
 - The reasons for holding the closed meeting
 - Location of the closed meeting

What Is Forbidden During A Closed Meeting?

- You may not:
 - Approve any ordinance, resolution, rule, regulation, contract or appointment
 - Interview a person to fill an elected position
 - Take final action
 - **Final votes must be open and on the record (except as allowed specifically by statute)**



What about Emergencies??



What about Emergencies??

The law allows for meetings for “emergency or urgent” matters if:

- The “best notice practicable” is given
- The minutes include a statement of the unforeseen circumstances that made the meeting necessary

Courts probably will not look kindly on made up emergencies...

RECORDS OF OPEN MEETINGS

(Utah Code § 52-4-203)

- DO WE HAVE TO KEEP MINUTES AND/OR Recordings?
- YES TO BOTH!
- Even though there is a recording, the approved written minutes will be the official record.
- include both written minutes and recording of open meeting as public records.
- Public body shall establish and implement procedures for the public body's approval of the written minutes each meeting

What Are The Requirements For Keeping Minutes of Open Meetings?

- All minutes must include
 - Date/time
 - Place of meeting
 - Names of all members present or absent
- In addition minutes of open meetings must include
 - All matters proposed, discussed or decided
 - All names and substance of information from individuals giving testimony
 - Individual votes on each matter
 - Any additional information requested by a member

What are the Requirements For Keeping Minutes of Closed Meetings?

- Minutes of closed meetings must include
 - The names of all members present
 - The names of others present at the closed meeting, unless it infringes on the purpose of the closed meeting
 - The closed meeting **must** be recorded and shall be complete and unedited
 - Note: There may be exceptions to this requirement see § 52-4-206(6)(a) and (b)
 - Detailed written minutes **may** be kept
 - Minutes and/or recordings of closed meetings are not public records.

52-4-304. Action challenging closed meeting.

(1) Notwithstanding the procedure established under Subsection [63G-2-202\(7\)](#), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:

- (a) review the recording or written minutes of the closed meeting in camera; and
- (b) decide the legality of the closed meeting.

(2) (a) If the judge determines that the public body did not violate Section [52-4-204](#), [52-4-205](#), or [52-4-206](#) regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.

(b) If the judge determines that the public body violated Section [52-4-204](#), [52-4-205](#), or [52-4-206](#) regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

(3) Nothing in this section may be construed to affect the ability of a public body to reclassify a record, as defined in Section [63G-2-103](#), as provided in Section [63G-2-307](#).

Utah Code §52-4-203(4) Minutes and Recordings of Open Meetings

- WHEN ARE THE MINUTES OF MEETINGS PUBLIC?
 - Written minutes and recordings of open meetings are public records pursuant to Utah Code § 63G-2-101 et seq. (GRAMA) and shall be released within a reasonable amount of time.

- Written minutes shall be available to the public before final approval when the minutes are only awaiting formal approval.
- The minutes released prior to final approval must be identified as “unapproved”.
- The recording of a open meeting must be made available within 3 business days.
- A public body may satisfy the requirements that minutes include the substance of matters proposed, discussed or decided or the substance of testimony or comments by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments provided (2017 change).

Electronic Message Transmissions

- Utah Code § 52-4-210 The Open Public Meetings Act does not restrict members of a public body from transmitting an electronic message to other members of the public body when the body is not in an open meeting.

WHAT HAPPENS IF SOMEONE VIOLATES OPMA?

- -302 & -305
- A court can void any action in violation of the law
 - Sometimes a violation can be “cured” by discussing and taking a public vote in a subsequent meeting
 - May have to pay court costs and attorneys fees
 - “In addition to any other penalty under this chapter, a member of a public body who intentionally violates or intentionally abets or advises a violation of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.”
(6 mos. Jail and/or \$1,000.00 fine)



Common Violations Of OPMA

- Failing to properly provide notice of a public meeting
- Discussing matters in a closed meeting that should be discussed during the open session
- Taking official or final action in a closed meeting
- Closing meetings without members of the body voting first in an open meeting to close the meeting
- Conducting a closed meeting for reasons other than those allowed by OPMA

WHO CAN ENFORCE OPMA?

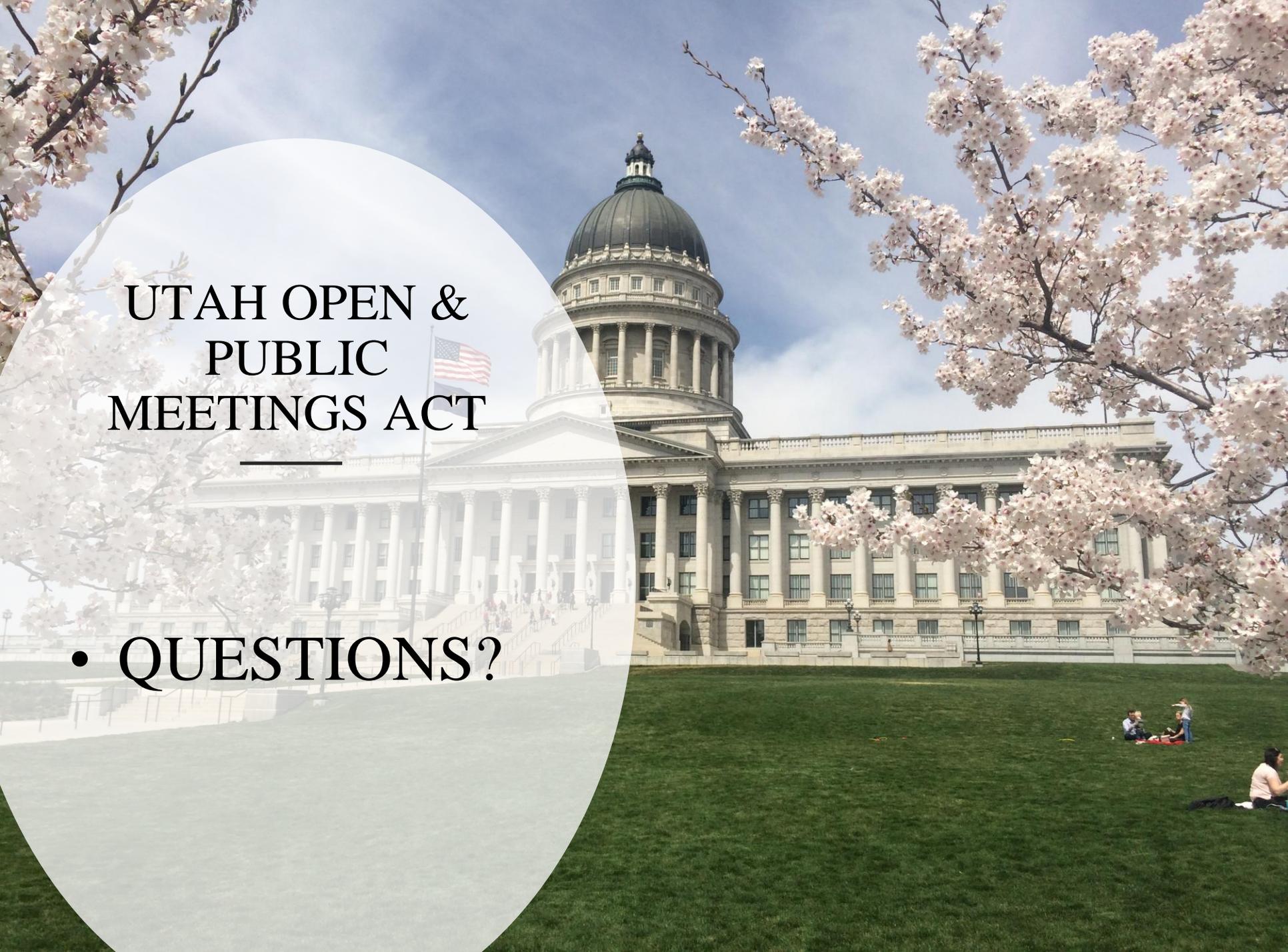
- The Courts
- The Attorney General
- A County Attorney
- A private citizen who is an aggrieved party

UTAH OPEN & PUBLIC MEETINGS ACT

- HOW LONG DOES A PARTY HAVE TO PURSUE CORRECTIVE ACTION?
 - 90 Days
 - 30 Days if it involves, bonds, notes, or debt

The Grand Take away is...?

- The purpose of OPMA is to allow the public to know what their public officials are doing during meetings.
- The notice provisions allow the public to know beforehand what their public officials are going to do during meetings.

A photograph of the Utah State Capitol building in Salt Lake City, Utah. The building is a large, classical-style structure with a prominent central dome and a portico with columns. In the foreground, there is a large green lawn with several people sitting on it. The scene is framed by cherry blossom branches in the upper corners. A semi-transparent white circle is overlaid on the left side of the image, containing text.

UTAH OPEN & PUBLIC MEETINGS ACT

- QUESTIONS?